

In order to determine whether capacity constraints exist, grantees should have a definition of ADA trip denial, missed trip (i.e., trip missed by the grantee), on-time performance, and excessively long trip. The grantee's definitions must make distinctions between trips it or its contractors miss (where the customer is not transported or elects not to take the trip) from late pickups (where the customer takes the trip despite vehicle arrival outside of the pickup window). Grantees are required to plan and budget for 100 percent of demand for next-day service. The grantee may not intentionally plan to deny, miss, or otherwise not serve a percentage of trips.

The regulations allow grantees to negotiate pickup times with ADA eligible persons within a one-hour +/-window. If the grantee cannot schedule a ride that is no more than one hour before or after the desired departing time, the trip must be tracked as a denial. Even if a rider accepts an offer of a trip that is outside the one-hour window, the trip must be tracked as a denial due to the entity's inability to meet the ADA service criteria. Similarly, if only one leg of a round trip can be reserved, and the rider declines to take both trips, it must be tracked as two denials. (If the rider accepts the "return" trip, only one trip has been denied). If the rider refuses an alternate time that is within the one-hour window, it is not a denial for the purposes of ADA compliance.

Grantees should have a mechanism in place for monitoring, tracking, and verifying these indicators of capacity constraints. While there is no regulatory requirement for record-keeping or monitoring in any particular way, the entity must be able to demonstrate that the trip denials it does have, as well as the missed trips, late pickups, trips of excessive length, etc., are not an operational pattern or practice that significantly limits the availability of ADA paratransit service. Grantees should track service for ADA trips separately from non-ADA trips. **No-Show Policies** Under 49 CFR Part 37.125(h), a grantee may establish an administrative procedure to suspend, for a reasonable period of time, the provision of complementary paratransit service to ADA eligible individuals who establish a *pattern or practice* of missing scheduled trips.

As explained in Appendix D to this section, a "pattern or practice" involves intentional, repeated or regular actions, not isolated, accidental, or singular incidents. An entity's no-show policy must therefore be narrowly tailored to ensure that suspension is only imposed for a true pattern or practice of missing scheduled trips. For example, three no-shows in 30 days would not be a pattern or practice for a frequent or daily rider. Such a policy would take into account frequency of rides and no-shows, and not use a simple number threshold.

Any suspensions must be "for a reasonable period of time." Suspension of service for 30 days for a first "offense," for example, is not "reasonable." A reasonable suspension for a first instance of a pattern or practice of no-shows might be a few days to a week. In no case should suspension periods exceed 30 days, and then only in the most extreme cases.

Only no-shows that are under the rider's control may be counted against the rider. No-shows caused by reasons beyond the rider's control (e.g., scheduling problems, late pickups, and operational problems on the part of the transit provider or a family emergency or sudden turn for the worse in a variable medical condition) or operator error must not be counted against the rider.

FTA has permitted transit providers to include late cancellations in their suspension policy, but only to the extent that late cancellations have the same effect on the system as a no-show, and only for late cancellations within the rider's control. FTA has found it acceptable to consider a late cancellation as one made within an hour or two before the pickup time provided to the rider.

Systems may not impose a mandatory financial penalty as part of a no-show policy, including charging for the fare for the no-show trip. 49 CFR Part 37.125(h) permits only the establishment of an administrative process to suspend, for a reasonable amount of time, the provision of complementary paratransit service to eligible individuals who establish a pattern or practice of missing scheduled trips. In very limited cases, however, transit operators and riders facing suspension have mutually agreed to make and accept payment for the missed trips in lieu of suspension. Where such arrangements are made voluntarily, FTA has elected not to intervene.

It is important to note that 49 CFR Part 37.125(h) *permits* an entity to establish a no-show policy; it does not require one to do so.

REFERENCE

49 CFR Parts 18.37 and 18.40